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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,694	11/29/2000	Yong Cao	UA0029 US NA	8823

23906 7590 06/18/2002

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WILMINGTON, DE 19805

EXAMINER

YAMNITZKY, MARIE ROSE

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 06/18/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/725,694

Applicant(s)  
Yong CAO et al.

Examiner  
M. Yamnitzky

Art Unit  
1774



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on May 31, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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1. This Office action is in response to applicants' second preliminary amendment received 05/31/02 with a certificate of mailing dated 05/15/02 (Paper No. 8). This second preliminary amendment crossed in the mail with the first Office action on the merits which was prepared by the examiner on 05/30/02 and mailed on 06/03/02 (Paper No. 7).

This Office action supplements Paper No. 7. The shortened statutory period for reply to Paper No. 7 (and this supplemental action) is reset to expire three months from the mailing date of this supplemental action.

2. In Paper No. 8, applicants amend the first page of the specification to state that the present application is a continuation-in-part of U.S. Patent Application No. 09/241,656, and to incorporate by reference the contents of 09/241,656 and 60/168,856 (a claim to the benefit of the filing date of 60/168,856 having previously been made).

However, the executed declaration makes no claim for priority, and the only priority claim indicated in the application data sheet provided when the application was originally filed is the claim for the benefit of the filing date of 60/168,856. Applicants have not met the requirements for receiving the benefit under 35 U.S.C. 120 of copending application 09/241,656. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78. Note in particular that 37 CFR 1.78 (a)(2) sets forth a time limit, and applicants have not met that time limit. See 37 CFR 1.78(a)(3) for what might be done

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when the reference required by 35 U.S.C. 120 and paragraph (a)(2) of 37 CFR 1.78 is presented after the time period provided by paragraph (a)(2) of 37 CFR 1.78.

3. The amendment filed 05/31/02 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the statement that the present application is a continuation in part of U.S. Patent Application No. 09/241,656, and the incorporation by reference of the contents of U.S. Provisional Application No. 60/168,856 and U.S. Patent Application No. 09/241,656. Note that even if the claim for the benefit of 09/241,656 is eventually accepted in accordance with 37 CFR 1.78(a)(3), the incorporation by reference of the contents of 60/168,856 and 09/241,656 will still be considered to introduce new matter into the disclosure of the invention.

Applicant is required to cancel the new matter in the reply to this Office Action.

4. All rejections set forth in Paper No. 7 are maintained. Note that even if the claim for the benefit of 09/241,656 is eventually accepted in accordance with 37 CFR 1.78(a)(3), the claim for priority will have direct bearing only on the rejection under 35 U.S.C. 102(a) based on WO 99/39394 and the provisional rejection under 35 U.S.C. 102(e) based on copending application 09/241,656.

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5. Any inquiry concerning this communication should be directed to Marie R. Yamnitzky at telephone number (703) 308-4413. The examiner works a flexible schedule but can generally be reached at this number from 6:30 a.m. to 4:00 p.m. Monday, Tuesday, Thursday and Friday, and every other Wednesday from 6:30 a.m. to 3:00 p.m.

The current fax numbers for Art Unit 1774 are (703) 872-9311 for official after final faxes and (703) 872-9310 or (703) 305-5408 for all other official faxes. (Unofficial faxes to be sent directly to examiner Yamnitzky can be sent to (703) 872-9041.)

MRY  
06/12/02

*Marie R. Yamnitzky*

MARIE YAMNITZKY  
PRIMARY EXAMINER

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